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THE COURT OF LAW AND CHANCERY OF THE CITY OF  
NORFOLK.

J. A. WILKINSON V. NORFOLK & WESTERN RAILWAY CO.\*

May 1, 1905.

INTERSTATE COMMERCE—*State regulation*—Secs. 129c (24), and 1294l, Va. Code 1904, *unconstitutional as to interstate shipments*. The Act of Assembly of Virginia known as the "Claytor Act" (sec. 1294c (24), identical with sec. 1294l, Va. Code 1904), purporting to make the initial carrier liable to the shipper in any event for the entire contract of carriage, is unconstitutional and void so far as interstate shipments are concerned, as being a regulation of interstate commerce.

G. M. Dillard, for the plaintiff.

Hughes & Little (Ro. M. Hughes, Jr.), for the defendant.

HON. WM. B. MARTIN, Judge:

This was an action to recover \$300 damages for alleged loss by reason of delay in the delivery of a cargo of lumber shipped from Pulaski on a through bill of lading to New York. The declaration in the case alleged that the Norfolk & Western Railway Company was a common carrier from Norfolk to New York.

On the trial of the case, the plaintiff offered in evidence his bill of lading, which was in the usual form, showing a contract by the Norfolk & Western Railway Company, the initial carrier, to carry from Pulaski to destination if on its line, or if not, to deliver to another carrier for purposes of transportation to destination.

When this bill of lading was offered, counsel for defendant objected on the ground of a variance, claiming that the declaration sued defendant as a common carrier from Norfolk to New York, that the public statutes, of which the court took judicial notice, showed the Norfolk & Western Railway Company to be a Virginia corporation, with its terminus at Norfolk, and that the bill of lading offered in evidence showed a mere contract by the railway company to haul to Norfolk and there deliver to the next connecting carrier.

In reply to this objection, the plaintiff's counsel contended that the Claytor act, section 1294c (24), 1 Pollard's Annotated Code,

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\*Reported by C. B. Garnett.

page 667, made the railway company a common carrier to New York.

To this, defendant's counsel replied that the act if intended to accomplish this was unconstitutional, citing *Central of Georgia Ry. Co. v. Murphy*, 196 U. S. 194.

After argument, the court, in passing upon the question of variance, held that the act was unconstitutional under the authority of that decision, and excluded the bill of lading from evidence as negating a contract by the defendant to act as common carrier from Norfolk to New York. The plaintiff thereupon took a non-suit.

NOTE—The ruling having been made orally from the bench on a question of evidence, was not in writing, and up to this date no written opinion has been filed.

In the March number of the REGISTER (10 Va. Law Reg. 1032), we called attention to the case of *Central of Georgia Railway Co. v. Murphy & Hunt*, 196 U. S. 194, 25 Sup. Ct. 218, and there took the position that the statutes referred to in the opinion above were unconstitutional so far as interstate shipments were concerned, and this position is sustained in the above case.

See also editorial in the May number of the REGISTER (11 Va. Law Reg. 56).

One point must be carefully noted, viz., that the statute is void only in so far as it concerns *inter-state* shipments; but that so far as *intra-state* shipments are concerned, the statute has full force and effect, unless there be some other flaw therein.

C. B. G.